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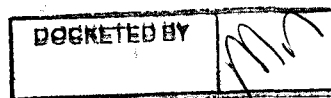
BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

KRISTIN K. MAYES, CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

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**IN THE MATTER OF THE
APPLICATION OF SOLARCITY
CORPORATION FOR A
DETERMINATION THAT WHEN IT
PROVIDES SOLAR SERVICE TO
ARIZONA SCHOOLS,
GOVERNMENTS, AND NON-PROFIT
ENTITIES IT IS NOT ACTING AS A
PUBLIC SERVICE CORPORATION
PURSUANT TO ART. 15, SECTION 2
OF THE ARIZONA CONSTITUTION**

Docket No. E-20690A-09-0346

**JOINT COMMENTS TO THE
PROPOSED ORDER BY SUNRUN
INC. AND SUNPOWER
CORPORATION**

SunRun Inc. ("SunRun") and SunPower Corporation ("SunPower"), which are collectively referred to herein as "Companies", hereby comment upon the recommended Order and supporting documentation filed by the Staff of the Arizona Corporation Commission ("Commission") on August 14, 2009 in Track 1 of this proceeding.

1 As described in more detail below, the Companies support the stated intent behind
2 the recommended Order — to allow SolarCity and Scottsdale Unified School District
3 (“School District”) to move forward with their Solar Services Agreements (“SSAs”) and
4 seek currently available stimulus funds without prejudicing any party’s legal position
5 regarding the issue of whether or not SolarCity is acting as a public service corporation
6 (“PSC”) subject to Commission jurisdiction. As provided for in the July 22, 2009
7 Procedural Order issued in this proceeding, that legal issue is to be addressed in Track 2
8 of this proceeding.
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11 However, certain provisions in the recommended Order unnecessarily presume
12 Commission jurisdiction. Accordingly, the Companies believe that those provisions
13 should be revised as set forth below to (i) accurately reflect the limited scope of Track 1,
14 and (ii) ensure that the final order does not presume Commission jurisdiction unless and
15 until it has been established on the basis of the record to be developed in Track 2.
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18 **1. Background of the Companies.**

19 SunRun is a retail supplier of residential solar power systems that provide
20 affordable, hassle-free solar electricity to homeowners. By owning, operating, and
21 maintaining these on-site solar systems, SunRun offers consumers the option of solar-
22 generated electricity without the burdensome capital expense and effort associated with
23 typical solar panel acquisition, installation and maintenance. SunRun launched its
24 operations in the Arizona residential solar market in April, 2009.
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1 SunPower (together with its subsidiaries) designs, manufactures and markets high-
2 performance solar electric power technologies. The Company's solar cells and solar
3 panels are manufactured using proprietary processes, and its technologies are based on
4 more than 15 years of research and development. The Company operates in two business
5 segments: Systems and Components. The Systems Segment generally represents sales
6 directly to systems owners of engineering, procurement, construction and other services
7 relating to solar electric power systems that integrate the Company's solar panels and
8 balance of systems components, as well as materials sourced from other manufacturers.
9 The Components Segment primarily represents sales of the Company's solar cells, solar
10 panels and inverters to solar systems installers and other resellers, including the
11 Company's global dealer network. SunPower has offices throughout North America and
12 in Germany, Italy, Korea, Australia and Spain.

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17 **2. The Companies support the intent behind Track 1 and the recommended**
18 **Order.**

19 Like most, if not all, parties in this Docket, the Companies believe that it is in the
20 public's best interest for the Commission to allow SolarCity and the School District to
21 move forward with their SSAs and seek currently available stimulus funds without the
22 necessity of a prior determination of whether or not SolarCity is a public service
23 corporation ("PSC"). The Companies also agree that determining whether or not SSA
24 providers, such as SolarCity, are PSCs will require a factual record, supplemented by
25 briefs and oral argument, which will be developed in Track 2. The Companies further
26 believe that the July 22, 2009 Procedural Order's bifurcation of this Docket into Track 1
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1 and Track 2 to allow the specific SSAs at issue to move forward on an expedited basis
2 independent of the PSC jurisdictional issue was fair and reasonable to the respective
3 interests of all parties. Finally, the Companies agree with Commission Staff that the
4 Track 1 Order should be very carefully limited so as to allow SolarCity and the School
5 District to put into operation the SSAs without prejudicing any party's legal position with
6 respect to Track 2 jurisdictional issues.
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9 **3. Issues with the recommended Order.**

10 The primary issues raised by the current language of the recommended Order are
11 found in the sections entitled "Conclusions of Law" and "Order". For example, ¶ 1 of the
12 Conclusions of Law section states "[f]or purposes of granting this preliminary relief, the
13 Commission has determined at this time that it has jurisdiction over SolarCity
14 Corporation and over the special contract rates filed as part of the Application in this
15 docket." [Emphasis added]. This language presumes that the Commission has
16 jurisdiction over SolarCity and over the rates in the SSAs, and in effect prejudices the
17 core issue that the Companies and many parties intend to address in Track 2. Similarly,
18 the two provisions in the "Order" section that "approve" the contract rates also inherently
19 presume that the Commission has the jurisdiction to make such determinations at this
20 point in time. Again, these are important conclusions that should not and need not be
21 presumed, especially while the jurisdiction question is still at issue in Track 2.
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1 **4. The Companies propose minor revisions to the recommended Order**
2 **consistent with the limited scope intent of Track 1.**

3 For the reasons discussed above, the Companies respectfully request that the
4 Commission amend the recommended Order sections entitled "Conclusions of Law" and
5 "Order" to provide as follows:
6

7 CONCLUSIONS OF LAW

8 1. The Commission, having reviewed the Application and Staff's
9 Memorandum dated August 14, 2009, concludes that it is in the public
10 interest to extend preliminary relief to SolarCity and the School District
11 while the determination of whether SolarCity is a public service corporation
12 remains open pending a future determination of that issue in Track 2 in this
Docket.

13 2. The Commission's findings in this Track 1 are made without
14 prejudice to the Applicant's and other parties' positions or arguments to be
15 presented in Track 2 of this Docket.

16 ORDER

17 IT IS THEREFORE ORDERED that SolarCity and the School
18 District are granted preliminary relief to implement the provisions of the
19 SSAs. Any conclusion(s) of law subsequently reached by the Commission
20 in Track 2 of this Docket will not be retroactively applied to either this
Order or the SSAs between SolarCity and the School District addressed
21 herein.

22 IT IS FURTHER ORDERED that the Commission issuance of this
23 Order is without prejudice to the Applicant's and other parties' positions or
24 arguments on the jurisdictional question to be addressed and resolved in
Track 2 of this Docket.

25 DATED this 21st day of August, 2009.

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21st day of August, 2009, with:

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